

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.9369 of 1997

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

SAMSUDDIN BABUBHAI KHOJA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/03/98

ORAL JUDGEMENT :

Rule. Service of the rule is waived by the learned AGP.

2. This petition challenges the order dated 18.12.1997 passed by the State Government in Food and Civil Supplies Department in Revision Application No.259 of 1997. The District Supplies Officer, Valsad had passed order dated 21.1.1997, cancelling the petitioner's

licence for breach of certain terms and conditions of licence and some of the provisions of the licensing order. That order was confirmed by the Collector in Appeal No.51/96-97. By the order under challenge the State Government has set aside the order of the Collector and remanded the matter to the Collector with a direction to give the petitioner copies of all the documents relied upon against the petitioner.

3. At the hearing of this petition today, a grievance is made that once the revisional authority is satisfied that the petitioner was not given reasonable opportunity of being heard, the revisional authority ought not to have allowed the order passed by the District Supply Officer to remain in operation by merely setting aside the order of the Collector. If the order is set aside on the ground of material adverse to the petitioner not having been supplied to the petitioner, the revisional authority ought to have remanded the matter to the original authority with a direction to supply relevant material to the petitioner and thereafter to proceed in accordance with law. It is also submitted that if the matter is looked into by the Collector and not by Mamlatdar, the petitioner will also lose his right of appeal. Learned counsel for the petitioner further submitted that the petitioner has also suffered material prejudice inasmuch as on account of the order of the District Supply Officer remaining in force, the petitioner is not getting supplies of essential commodities which he was getting before cancellation of licence. Learned counsel for the petitioner assures that the petitioner will give full cooperation for expeditious disposal of the inquiry on remand.

4. On the other hand the learned AGP appearing for the respondents submitted that since the State Government has remanded the matter to the Collector, the Collector will also be in a position to take evidence in the matter and hold de novo inquiry.

5. Having heard the learned counsel for the parties, it appears that in view of the finding given by the State Government that the petitioner was not given reasonable opportunity of being heard and the material adverse to him was not supplied to him, it would be just and proper to set aside the order of the District Supply Officer as well and remand the matter to the District Supply Officer with a direction to hold inquiry in accordance with law, i.e. to supply the petitioner with relevant material which is sought to be relied upon against the petitioner and thereafter to hear the parties and decide the matter

in accordance with law. The District Supply Officer shall complete this inquiry as expeditiously as possible.

6. Accordingly the order dated 21.1.1997 of the District Supply Officer, Valsad is set aside. It is directed that the District Supply Officer shall complete the inquiry in accordance with law within one month from the date of receipt of this order.

7. Since the order of the District Supply Officer is being set aside the respondents shall continue supply of essential commodities as was being done prior to cancellation of the licence. However, in order to ensure that the petitioner cooperates with the expeditious completion of the inquiry, the District Supply Officer will be at liberty not to continue supply in case the petitioner prays for any adjournment or does not cooperate with the inquiry.

8. The petition is disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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